# STRAITS SETTLEMENTS REPORTS.

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[ORIGINAL CIVIL JURISDICTION]
ADRIAN CLARK, J.
November 14, 1936.

## ALKAFF & CO.

v.

## SINGAPORE IMPROVEMENT TRUST.

[SINGAPORE ORIGINATING SUMMONS No. 101 of 1936].

*Municipal Ordinance, S. 148, sub-s. 3 (a) S. 145—Interest on Compensation.*

When land is acquired for backlane purposes under S. 148 of the Municipal Ordinance, interest is payable on such compensation from the date the right to retain possession was lost by the owner. It is payable in accordance with general equitable principles and not under S. 110 of the Singapore Improvement Ordinance. The rate of such interest should be a reasonable rate; and at the present date and in the circumstances of this case such rate should be limited to 5%.

*Singapore Improvement Trust* v. *Syed Ahmad bin Mohamed bin Ali Al Junied & another*, 1935 S.S.L.R. 184; 4 M.L.J. 170 not followed.

*Inglewood Pulp & Paper Co. Ltd.* v. *New Brunswick Electric Power Commission*. 1928 A.C. 492 followed.

ADJOURNED ORIGINATING SUMMONS.

*Walters* for Plaintiffs.

*Laycock* for Defendants.

The facts and arguments sufficiently appear from the judgment.

*Cur. Ad. Vult.*

**ADRIAN CLARK, J.**—The argument of this originating summons involved another attempt to accomplish the well-nigh impossible task of construing as one harmonious or at least practicable whole that unfortunate piece of legislation by reference, constituted by certain provisions of the Singapore Improvement Ordinance which refer back to other provisions of the Municipal Ordinance which, after several cross-references within that Ordinance itself, again throw back by reference to the Land Acquisition Ordinance.

The originating summons was taken out at a time when the revised edition of the Laws was not yet in force and references to Ordinances and sections in the various documents filed are therefore to the Ordinances and sections as they then existed. I think that it will now nevertheless be more practical, for the purposes of this judgment, to refer to the Ordinances and sections as they exist in the revised edition.

On the facts there is no dispute. The Singapore Improvement Trust decided that a certain backlane ought to be made and this necessitated the acquisition by the Singapore Improvement Trust of the whole of a certain plot of land, together with the buildings thereon, known as No. 14, North Canal Road. Of this property Messrs. Alkaff & Company were the "owners" within the meaning of that term as defined both in the Singapore Improvement Ordinance and the Municipal Ordinance (such definitions being substantially the same).

The Singapore Improvement Trust thereupon requested the Governor in Council to make; and the Governor in Council in due course did make, an order that the said backlane should be laid out and that No. 14, North Canal Road should be acquired by the Singapore Improvement Trust for the purpose of providing the said back-lane.

The 25th May, 1935 was the date on which this Order was made by the Governor in Council.

On the 27th June, 1935 the Singapore Improvement Trust registered the Order in accordance with the provisions of sub-section 3 (a) of section 148 of the Municipal Ordinance.

The Singapore Improvement Trust, however, did not take possession of the premises, had not yet done so when the originating summons was issued but eventually did so, I was informed, in September of 1936 considerably more than one year after the order was made by the Governor in Council at their request.

It is difficult to understand why the Singapore Improvement Trust should apply for such an order before they are actually ready, financially and otherwise, to set about immediate construction of the back lane; but it is unnecessary for the purposes of this originating summons to go into or decide any questions of fact in that connexion.

The amount of compensation to be paid by the Singapore Improvement Trust to Alkaff & Company for the expropriation of No. 14, North Canal Road was agreed between the parties at the figure of $33,786.

The points at issue between the parties are:

(a) The date on which that sum should be deemed to have become due and payable;

(b) Whether interest is payable by the Singapore Improvement Trust between that date and the actual date of payment; and,

(c) If so, what rate of interest is payable.

The answer ought to be one simple to ascertain; unfortunately it is not, since it involves the construction of legislation concerning which, in his judgment in the case of *Singapore Improvement Trust* v. *Syed Ahmad bin Mohamed bin Ali Al Junied & another*, (1935) S.S.L.R. 184 at p. 189; 4 M.L.J. 170 Mr. Justice a'Beckett Terrell says:—

> "It is impossible to imagine a more unfortunate example of legislation by reference. The effect of the various provisions and cross references had clearly not been fully considered and the result is practically unintelligible."

The laying out of back-lanes and the acquisition therefor of the necessary land were originally provided for in the Municipal Ordinance.

That Ordinance, in its entirety, still regulates these and other Municipal matters in Penang and in Malacca.

In Singapore, however, matters are complicated by the existence of the Singapore Improvement Trust and of the provisions of the Singapore Improvement Ordinance under which that Trust is constituted. Nevertheless the Municipal Ordinance must, I think, be taken as regulating such matters except in so far as the Singapore Improvement Ordinance has quite clearly and definitely modified, in matters arising in Singapore, the provisions of the Municipal Ordinance.

Section 2 (2) of the Singapore Improvement Ordinance provides that:—

> "....no back-lane shall be ordered to be laid out on the request of the Municipal Commissioners under section 148 of the Municipal Ordinance but the said section shall, in relation to lands situate within the Town and Island of Singapore, have effect as if the words 'the Singapore Improvement Trust' were substituted for the words 'the Commissioners' wherever those words occur in the said section, save in subsection (4) thereof."

The object of excluding subsection 4 of section 148 of the Municipal Ordinance from the effect of this enactment was probably to render unnecessary the formal conveyance or transfer to the Municipal Commissioners of the land acquired by the Singapore Improvement Trust, or equivalent action by the Municipal Commissioners under section 150 of the Municipal Ordinance.

The proviso to the subsection, however, creates some difficulty.

The *acquisition* of the property takes place under the Municipal Ordinance; the *compensation* is payable under "the said section," that is, under section 148 of the Municipal Ordinance; it is to be *determined* in accordance with the provisions of "the said Ordinance" (not of "this Ordinance") which must, again, refer to the Municipal Ordinance; but it is to be *determined by* "the Tribunal" a term not found in the Municipal Ordinance but defined in section 3 of the Singapore Improvement Ordinance as meaning, when used in the Singapore Improvement Ordinance, "a Tribunal constituted under section 108" of the Singapore Improvement Ordinance.

The Tribunal, therefore, is to be that constituted under the Singapore Improvement Ordinance but the compensation is to be determined by it "in accordance with the provisions of the Municipal Ordinance." The phrase is general and we must therefore, I think, go to the Municipal Ordinance for everything including, presumably, procedure and the right to and method of appeal, although these matters are also dealt with in The Singapore Improvement Ordinance in connexion with the adjudications of the Tribunal (see for example sections 113 and 116).

The reference back to section 148 of the Municipal Ordinance brings in the consideration of subsections 8 and 9 of that section in respect of the amount of land which has to be paid for and of subsection 10 in respect of the amount of money to be paid for the land and of the principles on which that amount is to be ascertained.

Subsection 11 provides a further complication by laying down the "method of ascertaining the price" by cross reference to section 145 of the Municipal Ordinance, such cross reference being presumably to subsection 13 of that section, which in turn sends us, in certain cases, to section 371 of the Municipal Ordinance (which provides for determination of such matters, with certain exceptions, by the Police or District Court); and in certain other cases to certain specified sections of the Land Acquisition Ordinance.

In the present case the Singapore Improvement Trust and the "owners" agreed to the amount of the compensation and it is therefore unnecessary to consider what the effect would have been of construing all these provisions together had there been any dispute as to the amount of compensation to be paid.

As to the questions raised in this Originating Summons the submissions made on behalf of the Singapore Improvement Trust is that they can be answered by construing together the provisions of section 148 of the Municipal Ordinance and of section 110 of the Singapore Improvement Ordinance.

I do not think this is so. Section 110 deals only with compensation payable in respect of land acquired *for the purposes of the Singapore Improvement Ordinance*, and speaks of compensation becoming payable on the date on which such land *vests in the Singapore Improvement Trust*. Now the laying out of back-lanes may form one item of an "Improvement Scheme" under the Singapore Improvement Ordinance and, if land has to be acquired in consequence, that land would be land acquired "for the purposes of" *the Singapore Improvement Ordinance*. In that case, however, the land would originally vest in *the Singapore Improvement Trust* "on such day as is appointed in the scheme" [see section 91 (1)] and would ultimately vest in the Municipal Commissioners only after publication

of a notification that the scheme has been executed [see section 103 (2)].

In the present case, however, I agree with the opinion which Mr. Justice a' Beckett Terrell expressed in *Syed Ahmad's* case that the land was *not* acquired for the purposes of the *Singapore Improvement Ordinance* but primarily for those of the *Municipal Ordinance*; and, moreover, the land at no time has vested in the Singapore Improvement Trust but directly in the Municipal Commissioners by virtue of the joint operation of section 2 (2) of the Singapore Improvement Ordinance with section 148 (4) of the Municipal Ordinance.

The provisions of section 110 of the Singapore Improvement Ordinance concerning the payment of interest can therefore, in my opinion, not be called directly in aid in answering the questions now before me. They are in any case somewhat strange provisions based, so Mr. Laycock informed me, on a false analogy between such compulsory statutory expropriations and the ordinary sale and conveyance of immoveable property between a willing vendor and a willing purchaser. In these every-day transactions there is an agreement to sell and buy but thereafter a considerable time usually elapses while the vendor's title is being investigated by the purchaser, and either a date is fixed for completion or else the purchaser does not pay over the purchase price and go into possession until he is satisfied that he prudently can do so. Until then the vendor remains the owner of the property, remains in possession of it and retains the le' right to enjoy the property by occupying it himself or by receiving the rents and profits of it. If he does so it is natural that he should not be allowed to claim concurrently to receive interest from the purchaser on the purchase price. In these statutory acquisitions the position is different. A date is fixed by the Ordinance on which the expropriated land vests in the Singapore Improvement Trust or Municipal Commissioners. Thereafter the former owner's title is divested and he has, in law, no right to continue to occupy the land, except as a tenant at will of the Singapore Improvement Trust or the Municipal Commissioners, and certainly no right to let or to receive rent for land which is no longer his. If the Singapore Improvement Trust delay taking possession until a date after that on which the land vested in them the provisions of subsection 4 of section 110 may therefore work hardship on the owner. I was told that, in practice, the former owner is permitted to continue to occupy or to receive the rents of the property until the Singapore Improvement Trust choose to take possession, and that subsection 4 of section 110 is based on that practice. The fact remains that in law the Singapore Improvement Trust could (subject to the proviso to that subsection) claim to receive the rents while refusing to pay interest on the compensation price.

Both the Singapore Improvement Ordinance and the relevant provisions of the Municipal Ordinance exist in the interests of the public as a whole but both are nevertheless enactments which interfere with ordinary proprietary rights of private persons and their provisions must therefore be examined strictly before it is held that any particular right existing at Common Law or in Equity is excluded.

In the present case I am satisfied, as I have stated, that the provisions of section 110 of the Singapore Improvement Ordinance cannot be applied to the acquisitions of land made under powers conferred by the Municipal Ordinance, and that only the latter Ordinance need be scrutinized in order to ascertain to what extent, in the case of land required for back-lanes which do not form part of an improvement scheme, the ordinary rights of the owners of that land are modified or restricted.

Under section 148 of the Municipal Ordinance the Governor in Council only makes his order at the request of the Singapore Improvement Trust. Once the order has been made the Singapore Improvement Trust, under subsection 3 of that section, "may register" the order under the Registration of Deeds Ordinance.

Considerable argument was developed before me as to the meaning of this phrase and *Julius* v. *Bishop of Oxford*, 5 A.C. 214 and *Reg.* v. *Bishop of Oxford*, 4 Q.B.D. 245, 525, were, as is usual in such a connexion, cited and discussed.

In my view the real object of subsection 3 of section 148 is merely to lay down that the order of the Governor in Council shall be deemed to be an assurance within the meaning of the Registration of Deeds Ordinance or, in other words, an instrument capable of registration under that Ordinance.

However that may be, I have no doubt that the subsection does not give the Singapore Improvement Trust, as Mr. Laycock appeared to suggest, a discretion as to whether or not they should register the order or as to how long they should delay before doing so. I am told that, in practice, the Singapore Improvement Trust delay many weeks or even months before registering the order and the excuse put forward for this delay is that they do not receive the necessary documents from the Clerk of Councils. That cannot be any justification for delay; I doubt if it is even a reasonable excuse. There can be no reason why the Clerk of Councils should not supply to the Trust a certified copy of the Governor's order on the very day it is made. In any

case such an order is, I believe, invariably gazetted in the Gazette issued on the Saturday following the date of the order and I am told that in practice what the Trust register is the notification so printed in the Gazette.

Subsection 4 provides that upon such registration the lands shall be deemed to have vested in the Commissioners. That is, however, only machinery. The operative act is really the Governor's order made at the request of the Municipal Commissioners themselves or, in Singapore, of the Trust on their behalf. As soon as the order is made and promulgated the owner can no longer freely enjoy his property even if the Trust can and do delay perfecting their title by registering that order. I have no doubt that the duty of the Municipal Commissioners, or of the Trust in Singapore, under the Municipal Ordinance is to register *forthwith* under subsection 3 of section 148 the order they have obtained under subsection 1 of that section.

Once the order is registered the Municipal Commissioners, under subsection 6, may forthwith enter into possession of the land and demolish any buildings on it.

It is clear therefore that the former owner has then lost all his rights in the land. He must *prima facie* be entitled, at that same moment, to something in return for what has been taken away from him, and that thing is the compensation payable by the Trust, even though the exact amount of it may not be ascertained until many weeks, or possibly months, later on. I can find nothing in the Municipal Ordinance to take away this *prima facie* right; indeed subsection 10 of section 148, which deals with the price to be paid, shows that that price is to be calculated on the value of the land "at the date of the request made by the (Trust) to the Governor in Council."

I can find in the Municipal Ordinance, moreover, no provisions (such are to be found in the Acquisition of Land Ordinance and in the Singapore Improvement Ordinance) dealing with the payment or withholding of interest between the date when the compensation is due and the date when it is actually paid.

I can also find nothing in the Municipal Ordinance which would entitle the Singapore Improvement Trust to delay taking possession of expropriated property with a view to or with the result of avoiding any liability to pay interest meanwhile on the purchase price.

In these circumstances the law applicable appears to be clearly that laid down by the Judicial Committee of the Privy Council in the case of *Inglewood Pulp and Paper Co., Ltd.*, v. *New Brunswick Electric Power Commission*, 1928 A.C. 492 at p. 498. The headnote to that case reads as follows:—

> "Upon the expropriation of land under statutory power, whether for the purpose of private gain or of good to the public at large, the owner is entitled to interest upon the principal sum awarded from the date when possession was taken, unless the statute clearly shows a contrary intention."

The judgment of their Lordships was delivered by Lord Warrington of Clyffe and contains (at pp. 498-9) the following passage,

> "It is now well established that on a contract for sale and purchase of land it is the practice to require the purchaser to pay interest on his purchase money from the date when he took possession: *per* Lord Cave L.C. in *Swift & Co.* v. *Board of Trade*, [1925] A.C. 520 at p. 532. The law on the point has also been extended to cases under the Lands Clauses Consolidation Act, 1845.
>
> Their Lordships can see no good reason for distinguishing the present case from such cases. It is true that the expropriation under the Act in question is not effected for private gain, but for the good of the public at large but for all that, the owner is deprived of his property in this case as much as in the other, and the rule has long been accepted in the interpretation of statutes that they are not to be held to deprive individuals of property without compensation unless the intention to do so is made quite clear. The statute in the present case contains nothing which indicates such an intention. The right to receive interest takes the place of the right to retain possession and is within the rule.
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> The respondents in their case state that they expropriated the land on October 13, 1920, the date from which the Appeal Division directed the interest to be calculated, and that may be taken as correct."

It is true that the judgment speaks of interest running from the date when the respondents "took possession" but an examination of the date of the relevant Act and of the only other date referred to makes it highly probable that the respondents in fact took possession on the same day as they filed their notice in the Registry of Deeds.

In any case the judgment clearly shows that the date on which possession was taken was that on which the respondents "expropriated the land" and the gist of the judgment is contained in the phrase "The right to receive interest takes the place of the right to retain possession."

In the present case, whatever the practice may in fact have been in similar cases under these Ordinances, the *right* to retain possession

was finally lost on the date when registration of the order was effected.

In this connexion I was also referred to the reported cases of:—

*Birch* v. *Joy*, 10 E.R. 222;
*Birch* v. *Vestry of St. Marylebone*, 20 L.T.R. 697;
*Harding* v. *Metro Railway Co.*, 7 Ch. App. 154;
*Rhys* v. *Dare Valley Railway Co.*, 19 Eq. 93;
*In re Pigott* v. *G. W. Railway Co.*, 18 Ch. D. 146 at p. 153;
*Fletcher* v. *Lancs. & Yorks. Railway*, (1902) 1 Ch. 901 at pp. 907 and 908;

all of which illustrate the same principle, if one keeps clearly in mind, when reading them, what was the date in each case at which the original owner's rights in the land were divested from him. It is true that *In re Richard And G. W. Railway Co.*, (1905) 1 K.B. 68, which was not cited to me, laid down that no interest was payable to a mineowner under the Railway Clauses Act, 1845, between the date when he was forced to stop working his seam and the date when compensation was actually paid to him, but this was said by Collins, M.R. *ibid* at p. 70 to be for the reason that the case was *not* one of sale and purchase of land but only of the owner's loss of a right otherwise incident to his enjoyment of his land, and that the compensation awarded therefore measured the whole rights of the parties.

The case of *Swift & Co.* v. *Board of Trade* which was also cited to me, is of itself of no assistance in determining the issues before me. As Lord Sumner stated in the course of his speech, (1925) A.C. 520 at p. 545 "the entire transaction is *sui generis*"; that transaction had therefore to be governed by the regulations in question and unless those regulations authorized the allowance of interest none could therefore be given. That decision, however, recognized the rules of Equity to which effect was later given in the *Inglewood* case and I am in any case bound, and content to be bound, by the latter decision.

Interest is therefore payable by the Singapore Improvement Trust on the sum of $33,786 at least from the 27th June, 1935 and, in my view, it could have been enforced as from the 25th May, 1935.

The only question that remains is the rate at which such interest should be paid. It is admitted that this is a matter which lies in the discretion of the Court and, in exercising that discretion, I have been asked to draw aid or inspiration from various sources. Mr. Walters referred to the case of *Tan Soo Hock* v. *Tan Jiak Choo*, (1930) S.S.L.R. 109; to the Land Acquisition Ordinance, Cap. 128, S. 35 and S. 40; to the Municipal Ordinance, S. 154; and to the Singapore Conditions of Sale, which form of conditions, though unofficial are recognized and largely employed by the legal profession in Singapore. In reply Mr. Laycock pointed out the dates of the decision in *Tan Soo Hock's* case and of the enactment of the Acquisition of Land Ordinance; and the recent reduction of the rate of interest on judgments, and he put on the file an affidavit to the effect that the Singapore Conditions of Sale were shortly to be amended to provide a rate of interest of 8 per cent. in lieu of 12 per cent. Where high rates of interest are provided for there is often included in its calculation a punitive or deterrent element which it is unnecessary to consider in a case like the present.

Although they may be otherwise irrelevant to the decision of the problem before me I think the provisions of section 110 of the Singapore Improvement Ordinance afford me the safest guide or analogy. In enacting that section the Legislature decided that when the Singapore Improvement Trust did become liable to pay interest out of its funds and in connexion with the exercise of its public duties that interest should be limited to 5 per cent.

At the present date and in all the circumstances of this case that appears to me to be the rate which the Singapore Improvement Trust should fairly be called upon to pay.

It has been said, in argument, that had No. 14 North Canal Road not in fact been untenanted at the time the Singapore Improvement Trust compulsorily acquired it the claim for interest would not have been made and the owners would have been content, in lieu, to continue collecting the rents until the Singapore Improvement Trust actually entered into possession.

That may or may not be so, but Messrs. Alkaff & Co., are in any case entitled to ascertain what are their actual *legal* rights under the Ordinance and it seems clear to me that they would have had no legal right to continue collecting any rents and that they are entitled in equity to interest in lieu of the loss of that right.

There is nothing in this decision that need prevent them or any other owner, however, from agreeing with the Singapore Improvement Trust, in future cases, to continue in enjoyment of their property in lieu of claiming interest, but any such agreement should be the subject of a separate contract outside the Ordinance itself.

There need also be very little hardship on the Singapore Improvement Trust itself due to such delay as must elapse before the exact amount of compensation is fixed, since they can always deposit, as I have known it to be done in cases under the Acquisition of Land Ordinance, the amount of their offer in such a way that they will eventually become liable to pay only the

interest on the difference (if any) between the amount of their offer and the amount of the compensation eventually fixed.

The decision to which I have come is unfortunately not identical with that arrived at in *Syed Ahmad's* case. That decision is a recent one; it has not been acted upon to any very great extent; and it is, technically, not binding on me. In so far as I differ from some of the conclusions of Mr. Justice a' Beckett Terrell, however, I do so with great diffidence, but emboldened to that course by the knowledge that some of the arguments submitted to me, and many of the cases cited to me (including the decision of the Privy Council in the *Inglewood* case) were not before him when *Syed Ahmad's* case was argued in Chambers and also by the fact that I have reason to believe that had those cases been cited to him his decision would have been different.

It will always be open to the Singapore Improvement Trust if they are embarrassed by these conflicting decisions to obtain a conclusive opinion from a higher Court as to the meaning and construction of this somewhat obscure and complicated legislation.

The orders and declarations that will be made by this Court on the prayers as framed in this originating summons are as follows:—

(1) (*a*) The Defendants ought to pay to the Plaintiffs interest on the compensation moneys payable by the defendants to the plaintiffs in respect of the acquisition for back-lane purposes of the land and premises known as 14 North Canal Road, from the 27th June, 1935, being the date when the relevant order was made under section 144 of Ordinance 135 (Municipal) was registered by the defendants, as is contended by the plaintiffs.

(*b*) The interest so payable is payable at a reasonable rate which is hereby fixed at the rate of 5 per centum per annum.

(*c*) Such interest is not payable under section 105 (A) (now section 110) of the Singapore Improvement Ordinance but in accordance with general equitable principles.

(2) That the Plaintiffs' costs be taxed and paid by the defendants on the higher scale.

*Order Accordingly.*

Solicitors for Alkaff & Co.—*Allen & Gledhill.*

Solicitors for Singapore Improvement Trust:—*Braddell Brothers.*

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[ORIGINAL CRIMINAL JURISDICTION]

ADRIAN CLARK, J.

September 10, 1936.

## REX v. LEE PRINTING CO., LTD.

[SINGAPORE ASSIZES (5th) CASE No. 7 of 1936]

*Criminal Procedure Code, ss. 148, 151 and 156—Commitment for Trial of Limited Company.*

A Magistrate can properly commit a Limited Company to stand its trial at assizes.

TRIAL BY JURY.

One of several Defendants was a limited company and on its behalf a preliminary objection was taken that its committal for trial was a nullity.

*S. B. Tan* for the Company.

*E. N. Taylor*, Deputy Public Prosecutor, for the Crown.

The arguments sufficiently appear from the judgment.

*Cur. Ad. Vult.*

**ADRIAN CLARK, J.**—In this case Mr. S. B. Tan appearing for the accused Company raised a preliminary objection, before plea, that the committal for trial of the Company was a nullity.

The learned Deputy Public Prosecutor raised a counter objection that the order for committal was an order pronounced by a Police Court within the meaning of section 295 of the Criminal Procedure Code (Ordinance No. 121), that no appeal had been preferred against that order and that it therefore stood and was binding on the accused.

If Mr. Tan's submission is sound, however, the objection goes to the jurisdiction and the point can be taken at any time. If the committal is a nullity the Company is not properly before this Court so as to be triable by it.

Mr. Tan's point was that a Magistrate, in committing for trial, must act under section 156 of Ordinance No. 121 (I cite the references to the Criminal Procedure Code as it existed at the date of committal) and that the accused Company had not been, and could not be, committed by warrant to custody—nor given bail—until and during trial.

Mr. Tan submitted that the law in this Colony is the same as it was in England before the passing of the Criminal Justice Act of 1925. The learned Deputy Public Prosecutor, *contra*, referred to section 5 of Ordinance No. 121 but I doubt whether that section can engraft into our Code the provisions of section 33 of the English Act of 1925 and, in any case, the learned Magistrate did not purport to act under that section nor to make any order corresponding to its provisions.

The offence in respect of which a charge has been presented against the Company in this Court is one under section 11 of the Merchandise Marks Ordinance (Ordinance No. 161).